

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

DAWN BERRY, Administrator for the
Estate of Brittany A. Berry, Deceased,

Plaintiff,

v.

MISSOURI DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

No. 2:24 CV 25 CDP

MEMORANDUM AND ORDER

Plaintiff asks that I reconsider my dismissal without prejudice of several defendants newly named in her Second Amended Complaint for failure to timely serve them under Rule 4(m), Federal Rules of Civil Procedure. (*See* ECF 44, Partial Order of Dismissal.) She also asks that I extend the time within which she may effect service of process. I will deny the motion.


On April 7, 2025, I ordered plaintiff to “show cause why her claims should not be dismissed without prejudice” for failure to effect timely service under Rule 4(m). (ECF 42, Order to Show Cause.) Under the Rule, the 90-day period within which to serve the Second Amended Complaint upon the newly named defendants expired March 27, 2025. In that Order, I cautioned that “[f]ailure to timely comply with this Order will result in the dismissal without prejudice of plaintiff’s claims as to any unserved defendant.” (*Id.*) However, as noted in the Partial

Order of Dismissal, plaintiff's response to the show cause order contained no explanation for her failure to serve the defendants and, indeed, did not attempt to show cause whatsoever. In her motion to reconsider plaintiff now provides "excusable neglect" reasons for her delay in seeking issuance of summons, but she continues to fail to provide any reason for not requesting waiver of service from defendants' "presumptive counsel," Assistant Missouri Attorney General Kevin Smith,¹ until weeks after the service period expired.

Plaintiff was cautioned that the unserved defendants would be dismissed if she failed to timely show cause for her failure to serve them. She failed to timely show cause, and her motion to reconsider does not cure that failure. To the extent plaintiff requests additional time to effect service, Rule 4(m) requires that I extend the period for service "if the plaintiff shows good cause for the failure" to make timely service. Plaintiff has failed to show good cause here.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's Motion to Reconsider and Motion for Extension of Time Wherein to Serve Complaint *Nunc Pro Tunc* [45] is **DENIED**.


CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of April, 2025.

¹ Notably, attorney Smith has been an attorney of record in this case since April 2024.